SUPREME COURT, U. S.

FILED
JAN 10 1967
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term, 1966.

No. 959

EMILIO ALBERGO,

Petitioner,

v.

READING COMPANY,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

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INDEX.

	Page
OPINIONS BELOW	2
JURISDICTION	2
QUESTIONS PRESENTED	3
STATEMENT OF THE CASE	4
REASONS RELIED UPON FOR ALLOWANCE OF THE WRIT	6
A. The Court of Appeals Has Usurped the Jury Function and Denied to Petitioner His Right to a Jury Trial	6
B. The Decision Below Ignores the Duty of F. E. L. A. Employers to Inspect Cars and Attachments and Provide a Safe Place to Work	8
C. The Court of Appeals Has Denied Petitioner the Fair Inferences From Facts in Evidence	12
D. The Court Below Has Denied Petitioner Application of the Res Ipsa Loquitur Doctrine	14
CONCLUSION	17
APPENDIX	1a
A. Order of the District Court for the Eastern District of Pennsylvania	1a
B. Court of Appeals Opinion	2a
C. Order Denying Petition for Rehearing	7a

TABLE OF CASES CITED.

	Page
Bailey v. Central Vermont Ry. Co., 319 U. S. 350, 63 S. Ct. 1062, 87 L. Ed. 1444 (1943)	9
Baltimore and Potomac R. Co. v. Mackey, 157 U. S. 72, 15 S. Ct. 491, 39 L. Ed. 624 (1894)	9
Basham v. Pennsylvania R. Co., 372 U. S. 699, 83 S. Ct. 965, 10 L. Ed. 2d 80 (1963)	12
Braswell v. New York, Chicago and St. Louis R. Co., 377 U. S. 405, 84 S. Ct. 1628 L. Ed. 2d (1964)	10
Chicago Great Western R. Co. v. Casura, 234 F. 2d 441 (8th Cir. 1956)	9
Conner v. Butler, 361 U. S. 29, 80 S. Ct. 21 (1959), 4 L. Ed. 2d 10 (1959)	13
Davis v. Baltimore & Ohio R. Co., 379 U. S. 671, 85 S. Ct. 636, 13 L. Ed. 2d 594 (1965)	14
Dennis v. Denver Rio Grande Western R. Co., 375 U. S. 208, 84 S. Ct. 291, 11 L. Ed. 2d 256 (1963)	6, 7, 10
Denver Rio Grande Western R. Co. v. Conley, 293 F. 2d 612 (10th Cir. 1961)	9
Dudley v. Scandrett, 115 F. 2d 728 (9th Cir. 1940)	11
Gallick v. Baltimore and Ohio Railroad Co., 372 U. S. 108, 83 S. Ct. 659, 9 L. Ed. 618 (1963)	7, 14
Harris v. Pennsylvania R. Co., 361 U. S. 15, 80 S. Ct. 22, 4 L. Ed. 2d 1 (1959)	9, 13
Harrison v. Missouri Pacific R. Co., 372 U. S. 248, 83 S. Ct. 690, 9 L. Ed. 2d 711 (1963)	10
Jesionowski v. Boston and Maine R. Co., 329 U. S. 452, 67 S. Ct. 401, 91 L. Ed. 416 (1947)	15
Johnson v. United States, 333 U. S. 46, 68 S. Ct. 391, 92 L. Ed. 1143 (1948)	15
Kooker v. Pittsburgh & Lake Erie R. R. Co., 258 F. 2d 876 (6th Cir. 1958)	10

TABLE OF CASES CITED (Continued).

	Page
Meeks v. Georgia Southern & Fla. Rwy. Co., 377 U. S. 405, 84 S. Ct. 1628, 12 L. Ed. 2d 495 (1964)	14
O'Neill v. Baltimore and Ohio R. Co., 348 U. S. 956, 75 S. Ct. 447, 99 L. Ed. 747 (1955)	16
Payne v. Baltimore and Ohio Railroad Co., 309 F. 2d 546 (6th Cir. 1962)	9, 10
Rogers v. Missouri Pacific Railroad Company, 352 U. S. 500, 77 S. Ct. 443, 1 L. Ed. 2d 493 (1957)	6, 12
San Juan Light & Transit Co. v. Requera, 224 U. S. 89, 32 S. Ct. 56 L. Ed. 680 (1912)	15
Sano v. Pa. R. R. Co., 282 F. 2d 935 (3rd Cir. 1960)	9
Shenker v. Baltimore & Ohio R. Co., 303 F. 2d 596 (3rd Cir. 1962), reversed and remanded 374 U. S. 1, 83 S. Ct. 1667, 10 L. Ed. 709 (1963)	7, 11
Sweeney v. Erving, 228 U. S. 233, 33 S. Ct. 416, 57 L. Ed. 815 (1913)	15
Texas & Pacific Ry. Co. v. Archibald, 170 U. S. 665, 18 S. Ct. 777, 42 L. Ed. 1188	9

STATUTES AND AUTHORITIES CITED.

	Page
35 A. L. R. 2d 475	8
Federal Employers Liability Act, 45 U. S. C. A. § 51 et seq.	4
Safety Appliance Act, 45 U. S. C. A. § 1-23	4
28 U. S. C. A. 1254(1)	2
28 U. S. C. A. 2101(c)	2

IN THE

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OCTOBER TERM, 1966.

No.

EMILIO ALBERGO,

Petitioner,

v.

READING COMPANY,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

The Petitioner, Emilio Albergo, was at all times pertinent to this petition an individual employed by Respondent, Reading Company, a railroad corporation duly incorporated under the laws of the Commonwealth of Pennsylvania. Petitioner respectfully prays that this Honorable Court grant a writ of certiorari to the United States Court of Appeals for the Third Circuit to review a judgment of that Court entered August 19, 1966, in which a petition for rehearing was denied October 13, 1966.

OPINIONS BELOW.

The opinion and order of the Court of Appeals dated August 19, 1966, is set forth in an appendix to this petition together with the order denying petition for rehearing. The opinion has not yet been published.

JURISDICTION.

(a) The judgment of the Court of Appeals for the Third Circuit, reversing the judgment in favor of this Petitioner which had been entered in the United States District Court for the Eastern District of Pennsylvania was entered on August 19, 1966, Judge Freedman dissenting.

(b) Pursuant to its rules, the Court of Appeals for the Third Circuit entered an order August 26, 1966, extending to September 15, 1966, the time within which a petition for rehearing might be filed. Petition for rehearing was filed September 15, 1966, and denied October 13, 1966.

(c) Jurisdiction to consider this petition is conferred upon this Court by 28 U. S. C. A. 1254(1), the petition being timely filed under the provision of 28 U. S. C. A. 2101(c).

QUESTIONS PRESENTED.

1. Has not an F. E. L. A. employee been deprived of his Constitutional right to a jury trial by a Court of Appeals entering Judgment N. O. V. where the evidence, and the law as mandated by this Court and Courts of Appeals other than the Third Circuit, clearly support with reason a jury finding of employer negligence?

2. Does not a railroad employer have a non-delegable duty to provide a reasonably safe place to work and does not this duty include a non-delegable and absolute duty to inspect railroad cars, their cargo and all appliances used to secure such cargo, whether originating on a foreign railroad or not?

3. Coupled with an eighteen-year history of metal bands breaking, is not the breaking of a metal band used to secure large pipes carried as cargo above the sides of a gondola car sufficient evidence to support, with reason, a finding by a jury that the band was either defective, improperly secured, inadequate for its purpose or that the cargo was improperly stored and thereby imposed on the carrier the obligation to inspect or require consignor or itself to adopt safer shipping techniques?

4. Is not the Court of Appeals required to apply the doctrine of res ipsa loquitur where injury resulted from the breaking of a two-inch metal band used to secure cargo carried above the sides of a gondola car where the gondola car, the cargo and band are in the exclusive control of Respondent and the accident would not have occurred in the ordinary course of things without Respondent's want of due care?

STATEMENT OF THE CASE.

The subject matter of this petition relates to an accident which Petitioner suffered while in the course of his employment by Respondent railroad on July 15, 1958. Suit was filed under the Federal Employers Liability Act, 45 U. S. C. A. § 51 et seq. and the Safety Appliance Act, 45 U. S. C. A. § 1-23, but withdrawn as to the latter at trial.

A general verdict of $23,100 was found by a jury after a full and adequate charge by the trial court. Judgment was entered on the verdict by the United States District Court for the Eastern District of Pennsylvania. Respondent's Motions for New Trial and Judgment N. O. V. for the accident of July 15, 1958, were denied by the trial court.

At the time of the accident of July 15, 1958, Petitioner was engaged in the performance of his duties as a conductor for Respondent in its Erie Avenue Freight yards at Philadelphia, Pennsylvania. Petitioner had been instructed to couple an engine to a draft of about fifteen gondola cars loaded with large pipes. These pipes were approximately eighteen to twenty-four inches in diameter and were piled four or five feet above the sides of the cars.

The two-inch metal bands were secured to each side of the gondola car and strung over the pipes in such a way as to hold the pipes in place. While engaged in moving the draft, Petitioner was standing next to the lead gondola car, when one of the metal bands snapped and struck him whip-like fashion in the testicles.

Metal bands of the same type and used for the same purpose had snapped on numerous prior occasions going back, according to one witness, eighteen years before the accident. In spite of being immediately notified of the accident, and the identity of the offending car and band, Respondent offered no evidence concerning the cause of the band breaking.

Notwithstanding the jury verdict and the mandates of this Court to the contrary, the Court of Appeals in a divided opinion concluded as a matter of law that Respondent was not negligent for the accident of July 15, 1958, and deprived Petitioner of his verdict. In so doing, the majority bottomed its decision in the observation that "[t]here was absolutely no evidence in the instant case as to what caused the band to break" (Opinion p. 4a). And further, "[i]ndeed, *it was not even shown that the railroad had anything to do with the loading of the cars.* This would not relieve the defendant of liability *if it* was guilty of some negligent conduct which contributed to the occurrence in question, but there was no evidence from which it could have been inferred that it was" (Opinion p. 4a, emphasis added). This conclusion is manifestly in error. Not only does this language eliminate the doctrine of res ipsa loquitur but it also totally ignores opinions of this Court that the employer can be liable for an unsafe condition created prior to its receipt of the car.

Dissenting from this view, Judge Freedman quite properly observed "[t]hat existence of a number of broken bands over a period of time was enough to permit the jury to conclude that defendant should either have required shippers to use stronger bands or should have inspected the bands which were used."

REASONS RELIED UPON FOR ALLOWANCE OF THE WRIT.

A. The Court of Appeals Has Usurped the Jury Function and Denied to Petitioner His Right to a Jury Trial.

The clear and simple function of an appellate court in F. E. L. A. cases has been repeatedly defined by this Court as "limited to the single inquiry whether with reason the conclusion may be drawn that negligence of the employer played any part at all in the injury or death." *Rogers v. Missouri Pacific Railroad Company,* 352 U. S. 500, 507, 77 S. Ct. 443, 449, 1 L. Ed. 2d 493 (1957).

While *Rogers, supra,* was concerned primarily with causation it clearly applied also to the issue of employer negligence. "The Congress when adopting the law was particularly concerned that the issues whether there was *employer fault* and whether that fault played any part in the injury or death of the employee should be decided by the jury whenever fair-minded men could reach these conclusions on the evidence." (Emphasis ours.) *Rogers v. Missouri Pacific Railroad Co., supra.*

In spite of the clarity with which the doctrine has been proclaimed, this Court has all too frequently been called upon to reverse appellate courts either unwilling or unable to apply it, as in *Dennis v. Denver Rio Grande Western R. Co.,* 375 U. S. 208, 84 S. Ct. 291, 292, 11 L. Ed. 2d 256 (1963) where an appellate court deprived an F. E. L. A. employee of his verdict. A workman improperly dressed for the job was required to work in temperatures between 10 degrees and minus 5 degrees fahrenheit and suffered frostbite during the discharge of his duties. This Court promptly corrected the error observing that, ". . . these facts, if believed, establish negligence by respondent railroad, since they show that the foreman, who had control over the petitioner's activities while on this job, did not take all necessary and reasonable precautions to prevent injury to peti-

tioner when put on notice of his condition." Also significant is *Gallick v. Baltimore and Ohio Railroad Co.*, 372 U. S. 108, 83 S. Ct. 659, 9 L. Ed. 618 (1963), in which this Court reversed a Judgment N. O. V. and held that where an infectious insect bite occurred near a contaminated pool of water in the area where plaintiff was required to work, a jury was entitled to conclude that the insect was drawn to the area or made infectious by the fetid water and that permitting the dangerous condition to exist was negligence.

Again, as in *Gallick* and *Dennis, supra,* the instant case presents a clear and compelling factual issue for the jury. It is uncontradicted that the two-inch metal band broke. It was in use to secure heavy cargo stacked four or five feet above the sides of a gondola car. The evidence was clear that similar bands had broken on prior occasions. In addition, all the instruments of causation, the band, cargo and gondola car, were in the exclusive control of Respondent.

Paradoxically, the Court of Appeals was itself able to infer from the evidence four likely causes of the band breaking,[1] but denied to Petitioner the benefit of any of these. Moreover, the majority persists not only in their demand that Petitioner prove the exact cause of the mishap, but concludes that there is no employer negligence unless Petitioner further shows that Respondent ". . . was guilty of some conduct which contributed to the occurrence in question, . . ." (Opinion p. 4a).

This is precisely the same error made by the same Court of Appeals in *Shenker v. Baltimore & Ohio R. Co.*, 303 F. 2d 596 (3rd Cir. 1962), reversed and remanded 374 U. S. 1, 83 S. Ct. 1667, 10 L. Ed. 709 (1963). There, as here, the Third Circuit failed to recognize and impose on an F. E. L. A. employer the non-delegable and absolute duty to inspect a baggage car, simply because it was not owned or controlled by the defendant railroad. If, as in *Shenker,*

1. ". . . For example, there was no showing that the band was defective, or inadequate, that it was improperly attached, or that the manner in which the pipes were secured was in any way related to the breaking of the band. . . ." (Opinion p. 4a).

supra, an employer is required to inspect a car of another railroad over which it has no control and if its failure to do so can be said with reason to support a jury verdict of employer negligence, how much more certain is the reasonable conclusion of the jury in the instant case where Respondent not only had exclusive possession of the offending parts, but had knowledge of the fact that bands had broken many times previously.

This jury had little difficulty concluding from the evidence and, with reason, either that the band was unsafe for the use to which it was put *or* that it was rusted *or* otherwise defective, *or* that it was improperly attached to the car *or* that the pipes were piled too high to be safely held in place by the band. Additionally, regardless of the actual physical cause of the break, a finding from the evidence that the break was due in part to a failure of Respondent to inspect the cargo or failure to require consignors to use stronger or different bands is compelling and reasonable. This is precisely Judge Freedman's dissent.

Ignoring for a moment the evidence of prior breaking of bands and Respondent's knowledge thereof and assuming that Petitioner did no more by way of producing evidence than the Court below opines he did, the decision still deprives him of the rule of res ipsa loquitur, to which he was entitled under the undisputed facts. This record comports in all respects to the reasoning of this Court in applying the doctrine in F. E. L. A. cases.[2]

B. The Decision Below Ignores the Duty of F. E. L. A. Employers to Inspect Cars and Attachments and Provide a Safe Place to Work.

For seven decades this Court has imposed on railroad employers a duty not only to inspect their own cars but cars of others in their possession.

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2. See 35 A. L. R. 2d 475 Annotations of 43 F. E. L. A. cases applying res ipsa loquitur.

"We are of opinion that sound reason and public policy concur in sustaining the principle that a railroad company is under a legal duty not to expose its employees to dangers arising from such defects in foreign cars as may be discovered by reasonable inspection before such cars are admitted to its trains." *Baltimore and Potomac R. Co. v. Mackey,* 157 U. S. 72, 91, 15 S. Ct. 491, 39 L. Ed. 624 (1894).

In *Texas & Pacific Ry. Co. v. Archibald,* 170 U. S. 665, 671, 18 S. Ct. 777, 42 L. Ed. 1188, this Court further observed that ". . . it is a duty of the employer to furnish appliances free from defects discoverable by the exercise of ordinary care and that the employee has a right to rely on this duty being performed." See also *Bailey v. Central Vermont Ry. Co.,* 319 U. S. 350, 63 S. Ct. 1062, 87 L. Ed. 1444 (1943) and *Sano v. Pa. R. R. Co.,* 282 F. 2d 935 (3rd Cir. 1960).

Moreover, the duty of an F. E. L. A. employer to inspect tracks over which it moves its trains implies constructive notice of any unsafe condition even though the employer does not own or control the tracks in question. *Harris v. Pennsylvania R. Co.,* 361 U. S. 15, 80 S. Ct. 22, 4 L. Ed. 2d 1 (1959). This principle has long been understood and applied by Courts of Appeal. In *Denver Rio Grande Western R. Co. v. Conley,* 293 F. 2d 612 (10th Cir. 1961) an F. E. L. A. employee, while a passenger on a switch engine, was injured because of a defective track on premises not under the employer's control; *Chicago Great Western R. Co. v. Casura,* 234 F. 2d 441 (8th Cir. 1956), imposed liability for failure of the railroad to inspect a defective gate on the private property of a consignee; and *Payne v. Baltimore and Ohio Railroad Co.,* 309 F. 2d 546 (6th Cir. 1962), involved a car derailed by ashes negligently allowed by a consignee to accumulate on its spur track. Recovery was sustained in part because the jury was justified in finding ". . . liability by virtue of defendants

independent negligence in sending the boxcar on a track having a dangerous condition present *which could have been foreseen* . . . "[3] (Emphasis ours.)

Strikingly in *Payne, supra,* there was no evidence that the accumulation of ashes had developed on prior occasions—in fact the evidence did indicate that this particular condition did not develop on the consignee's property until several hours before the accident. Whether the condition was reasonably foreseeable was a jury issue. How much more compelling the instant case where there was evidence of respondent's knowledge of the danger preceding the accident by eighteen years and no evidence of the employer's efforts, if any, to protect Petitioner from the known hazard.

Has an F. E. L. A. employer discharged its duty to provide a safe place to work when the premises alone are safe, without regard to dangers or defects existing in cars, equipment, or acts of co-employees? This Court has frequently and emphatically answered that question in the negative. In *Harrison v. Missouri Pacific R. Co.,* 372 U. S. 248, 83 S. Ct. 690, 9 L. Ed. 2d 711 (1963). The Court reversed the Illinois Appellate Court, 35 Ill. App. 2d 66, N. E. 2d 737, which had set aside a jury verdict for an employee injured by the intentional tort of a co-worker. Knowledge by defendant of the danger was for the jury, since there was evidence to support this conclusion. Whether ". . . the foreseeable danger was from intentional or criminal misconduct is irrelevant; respondent nonetheless has a duty to make reasonable provision against it." Unreasonable exposure to weather was the basis for recovery in *Dennis v. Denver Rio Grande Western R. Co., supra,* and *Braswell v. New York, Chicago and St. Louis R. Co.,* 377 U. S. 405, 84 S. Ct. 1628 L. Ed. 2d (1964) reinstated a

3. See also *Kooker v. Pittsburgh & Lake Erie R. R. Co.,* 258 F. 2d 876 (6th Cir. 1958) where an employee was injured while descending an icy path on a neighboring premises in his efforts to reach the place where he was assigned to work.

verdict based on employer negligence in assigning the plaintiff to work he was physically unable to do.

Unchallenged and unchanged is the reasoning of *Dudley v. Scandrett,* 115 F. 2d 728 (9th Cir. 1940). A baggageman was lacerated by a sharp edge on a smokejack being shipped as cargo. The injury occurred as the employee reached for other cargo behind the smokejack. The employer's negligence was in failing to demand of the consignor that the parcel be wrapped in a way that would pad and cover the knife-like edge of the shipment and render it reasonably safe for handling. When considering the hazards created by the metal strap in the instant case and the fact that the hazard was well known for many years, it was manifest that the employer was negligent in failing to demand of consignors a safer method of securing the cargo or in applying less strain on the bands by carrying less cargo in each car. Notwithstanding their knowledge of prior incidents, not only was there no evidence of any effort to demand safety of the consignor; but there was no evidence that the car, the cargo or the metal bands were at any time inspected by the railroad.

Of paramount interest on the issue of Respondent's duty is *Shenker v. Baltimore & Ohio R. Co., supra.* Plaintiff, a baggageman from B & O, was required to load baggage at a P. & L. E. station. He was away from B & O premises and working on a P. & L. E. train when he was injured because of a defective door. In reversing the Third Circuit and reinstating a jury verdict, this Court concluded:

> ". . . We hold that the B & O had a duty to inspect P. & L. E. cars before permitting its employees to work with them . . ." 374 U. S. 8, 83 S. Ct. 1672.

And further:

> ". . . Nor is it an answer to claim that the B & O lacked control or supervision over the P. & L. E. car.

> Such arguments have never supported an exception to the employer's duty to provide a safe place to work, ..." 374 U. S. 10, 83 S. Ct. 1673.

Is it to be argued in this case, as a matter of law, that an inspection of the car or cargo would not have disclosed the hazardous condition? To do so is to say that the railroad, by refusing to discharge its duty to inspect, is able to escape liability simply by not knowing the exact cause of the accident, notwithstanding that the band did break and that the railroad knew of prior incidents of bands breaking. Clearly, the questions of whether an inspection or whether safer methods of shipping would have eliminated the defect were properly for the jury.

C. The Court of Appeals Has Denied Petitioner the Fair Inferences From Facts in Evidence.

Pursuant to the mandates of *Rogers v. Missouri Pacific Railroad*, 352 U. S. 500, 507, 77 S. Ct. 443, 449, 1 L. Ed. 2d 493 (1957), the simple issue in considering inferences of the evidence is whether they support ". . . with reason, the conclusion . . . that negligence of the employer played any part at all in the injury or death". Thus, in *Basham v. Pennsylvania R. Co.*, 372 U. S. 699, 701, 83 S. Ct. 965, 10 L. Ed. 2d 80 (1963) where a car repairman, while on a hoist type platform, was injured by its sudden shifting movement, he was required to show only that the platform moved, *not what caused it to move.* On the reasoning of the present case, the Court below would no doubt have required Mr. Basham to prove not only the cause of the platform moving but that whatever the cause it was due to the railroad's negligence. This is virtually the same error which required certiorari to the New York Court of Appeals in *Basham, supra.*

In demanding of petitioner that he prove the cause of the band snapping or breaking, the decision below is manifestly contrary to every dictate of this Court. In

Harris v. Pennsylvania R. Co., 361 U. S. 15, 80 S. Ct. 22, 4 L. Ed. 2d 1 (1959), an employee of the Pennsylvania Railroad slipped on a crosstie while at work on Nickel Plate Railroad property. From the sole evidence of grease on his shoe after the fall, a jury found that there must have been grease on the crosstie which caused plaintiff's injury, notwithstanding there was no direct evidence of grease on the crosstie, who put it there or whether the Pennsylvania Railroad could have discovered it by inspection. Further, even though the accident occurred on Nickel Plate Railroad property, it was still the duty of the employer railroad to see that the crosstie was safe for its employee's use. In the present case this jury had no need to infer the immediate cause of the injury, such as grease on the crosstie, or prior knowledge of a dangerous condition, by the railroad. That the band broke and struck petitioner and that this had happened on previous occasions, were matters of direct evidence. Is it less reasonable for a jury to find employer negligence as a cause in the instant case than where there is grease on a partially concealed crosstie on a foreign railroad, no evidence of how long it was there, who put it there or whether it could have been observed by inspection? The inferences from which the jury found its verdict in *Harris v. Pennsylvania R. Co., supra,* are immensely broader than the present case and yet were ignored by the Court of Appeals.

Patently contrary to the court below is *Conner v. Butler,* 361 U. S. 29, 80 S. Ct. 21 (1959), 4 L. Ed. 2d 10 (1959), which involved an employee injured by a passenger car trapdoor which fell on him as he passed through it. Again, there was no direct evidence that the trapdoor was broken or otherwise defective, yet there was a jury question presented. *Conner* represented a situation where the jury was allowed to infer "defectiveness" and "knowledge" on the railroad's part without direct support in the evidence. In the instant case "defectiveness" was obvious—the band broke. Secondly, there was *direct* evidence of

bands breaking on prior occasions. It seems beyond argument that there was no justification in either fact or law for the Court of Appeals to take this employee's verdict from him.

Also, the decision below ignores *Davis v. Baltimore & Ohio R. Co.*, 379 U. S. 671, 85 S. Ct. 636, 13 L. Ed. 2d 594 (1965), where from the fact of plaintiff's fall in an elevator shaft and the presence of a fork lift truck near where he had been working, a jury concluded, with reason, that movement of the truck caused plaintiff's fall and that this movement was due to employer negligence.[4]

It is eminently clear that the simple and compelling explanations for the band breaking in the present case all reasonably involve defendant's negligence as a cause. Had respondent discharged its duty to inspect, it could have discovered a defective band or one that was twisted or improperly applied.

If, in fact, the pipes were stacked too high for the capacity of the band in question, this also would have been discovered by inspection. The railroad was on notice that these bands did break in the past and was under a duty to determine whether they were generally adequate for the purpose. Reasonable men could and did conclude that plaintiff's injury was caused, in whole or in part, by the failure of defendant to anticipate, inspect, and correct the defective condition.

D. The Court Below Has Denied Petitioner Application of the Res Ipsa Loquitur Doctrine.

The import of res ipsa loquitur is that where the circumstances surrounding the happening of an accident support its application, the burden of going forward with

4. See also: *Meeks v. Georgia Southern & Fla. Rwy. Co.*, 377 U. S. 405, 84 S. Ct. 1628, 12 L. Ed. 2d 495 (1964), where plaintiff may have been injured in alighting from a train or moving a derailer or chocking a car; and *Gallick v. Baltimore & Ohio R., supra,* where no one could identify the type or toxic nature of the contaminated bug.

evidence shifts to the defendant to explain the happening of the accident. At this point there is a jury issue, whether defendant decides to offer evidence or not. This doctrine has long been applied in F. E. L. A. cases. *Sweeney v. Erving,* 228 U. S. 233, 33 S. Ct. 416, 57 L. Ed. 815 (1913).

As defined by this Court in *San Juan Light & Transit Co. v. Requera,* 224 U. S. 89, 98, 32 S. Ct., 56 L. Ed. 680 (1912) the doctrine applies:

> "When a thing which causes injury without fault of the injured person, is shown to be under the exclusive control of the defendant, and the injury is such as in the ordinary course of things does not occur if one having such control uses proper care, it affords reasonable evidence in the absence of an explanation that the injury arose from the defendant's want of care."[5]

The significance of the doctrine and its application to the present case is evident from *Johnson v. United States,* 333 U. S. 46, 68 S. Ct. 391, 92 L. Ed. 1143 (1948). The injured employee could testify only that a block being held above him by a co-worker fell and struck him on the head. There was no evidence concerning the cause of the block falling. In applying the res ipsa loquitur doctrine this Court noted:

> ". . . the falling of the block is alone sufficient basis for an inference that the man who held the block was negligent." 33 U. S. 48

and further:

> ". . . no act need be explicable only in terms of negligence in order for the rule of res ipsa loquitur to be invoked. The rule deals only with permissible inferences from unexplained events." 33 U. S. 49

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5. See also *Jesionowski v. Boston and Maine R. Co.,* 329 U. S. 452, 67 S. Ct. 401, 91 L. Ed. 416 (1947). An F. E. L. A. case.

Would there be a difference in applicable evidentiary rules if Petitioner had been struck by a pipe falling when the band broke? Indeed, there is no legal or logical difference in an employee being struck by a falling pipe, or falling block, or by snapping bands. All involve injury which in the ordinary course of things would not occur if the railroad, having control, had not been lacking in due care.

Also analogous on its facts but contrary in its result to the instant case is *O'Neill v. Baltimore and Ohio R. Co.*, 348 U. S. 956, 75 S. Ct. 447, 99 L. Ed. 747 (1955). Plaintiff's injury resulted from a bolt breaking. There was no direct evidence as to what caused the bolt to break. Notwithstanding defendant's evidence that the bolt was new and not manufactured by it, this Court held that the mere fact that it broke constituted a jury issue. Whether a bolt breaks or a band snaps, both afford reasonable evidence that the injury was caused by the employer's want of care, since neither would occur in the ordinary course of things without a lack of due care by the railroad.

Of the several probable causes of the band breaking, the jury could have found either, that it was inadequate or defective, or improperly attached or that the car was overloaded with pipe. All are clearly explainable, with reason, on the basis of defendant's negligence in failing to inspect the bands or in failing to use reasonable care in maintaining cars in its control reasonably safe for use.

Notwithstanding that the railroad had exclusive control of the car and its cargo and had immediate notice of the accident and the car involved, no evidence was offered to show that an inspection was made or the results thereof before or after the accident. In spite of this, the Court below has relieved the railroad of its burden by demanding of Petitioner that he show why the band snapped. The Court of Appeals stripped from Petitioner the benefits of res ipsa loquitur—then, on a reduced record, entered Judgment N. O. V.

CONCLUSION.

Certiorari should be granted to review this decision, which denies to Petitioner his fundamental right to a jury trial guaranteed by the Federal Employers' Liability Act and decisions of this Court.

The Appeals Court has deprived Petitioner of a jury verdict, which was clearly justified, with reason, on the fair inferences of the evidence, without being able to ascribe a single possible cause of the accident which does not involve employer negligence.

The decision ignores the Respondent's duty, as mandated by numerous decisions of this Court, to provide a reasonably safe place to work and the concomitant duty to inspect not only premises, but appliances, cars and their cargo.

Finally, Petitioner has been denied the fundamental application of the doctrine of res ipsa loquitur, notwithstanding that all explanations for the cause of the accident, as well as the cause itself, were within Respondent's exclusive knowledge and control and reasonably explainable on the basis of Respondent's negligence.

Certiorari is required not only in justice to Petitioner, but to clear the record of a decision which is certain to confound and confuse and which is fundamentally contrary to the numerous mandates of this Court.

It is respectfully submitted that the order of the Court of Appeals be reversed and the jury verdict reinstated.

Respectfully submitted,

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Attorney for Petitioner.